

**RULES  
OF  
DEPARTMENT OF FINANCE AND ADMINISTRATION**

**CHAPTER 0620-3-3  
PERSONAL, PROFESSIONAL  
AND CONSULTING SERVICE CONTRACTS**

**TABLE OF CONTENTS**

0620-3-3-.01	Applicability	0620-3-3-.09	Delegated Authority
0620-3-3-.02	Office of Contracts Review	0620-3-3-.10	Contract Management.
0620-3-3-.03	Procurement Methods	0620-3-3-.11	Contract Termination
0620-3-3-.04	Protest Procedures	0620-3-3-.12	Exceptions To Rules
0620-3-3-.05	Contract Form	0620-3-3-.13	Appendix I of Rule 0620-3-3-.04
0620-3-3-.06	Contract Approval	0620-3-3-.14	Repealed
0620-3-3-.07	General Requirements	0620-3-3-.15	Repealed
0620-3-3-.08	Special Cases		

**0620-3-3-.01 APPLICABILITY.** These rules shall apply to all procurements and resulting contracts for personal services, professional services and consultant services entered into by the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the state of Tennessee (referenced herein as “agency”), with the following exceptions:

- (1) Contracts of the Department of Transportation for construction and engineering which are made in accordance with the provisions of Tennessee Code Annotated, §§ 54-5-113, et. seq. shall be exempt from these rules.
- (2) Contracts for services which, by their nature, have sufficiently uniform and impersonal criteria so that the Department of General Services may properly let the contract by bid based upon conformance with required specifications and lowest overall price, may be procured through the Department of General Services, Purchasing Division.

Examples of such services include but are not limited to: pest control, moving and hauling, refuse collection, charter service (e.g., vehicle, plane), slaughtering services and meat processing, answering services, printing services, ambulance service, bulldozer service, maintenance (e.g., elevator, machinery, building, grounds, plumbing, electrical), window washing, laundry, and film processing.

- (3) The Commissioner of Finance and Administration may waive any part of these rules that may detrimentally impact federal funding.
- (4) Any part of these rules which may conflict with applicable law shall be null and void.
- (5) The University of Tennessee and the Tennessee Board of Regents college and university systems shall have the option of:
  - (a) following these rules, the policy and procedures specified herein; or
  - (b) developing their own service contracting procedures, provided that such are in compliance with the policy expressed in these rules.
- (6) In lieu of approvals required in accordance with Rule 0620-3-3-.06(3), the head of a procuring agency may approve the procurement methodology and associated procurement documents should the total cost of services fall below \$500.00 (or another amount up to \$15,000.00 which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury).

(Rule 0620-3-3-.01, continued)

- (a) Service procurements under this threshold shall be made in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines but shall require no approval beyond that of the procuring agency head; provided that:
  - 1. such procurements are still subject to applicable provisions of these rules;
  - 2. such procurements do not require expenditures from more than one fiscal year;
  - 3. such procurements do not involve the purchase of financial management, auditing, accounting, management services of all types, management studies, planning services, public relations, evaluations, systems designs, data processing, engineering, or architectural services;
  - 4. procurement requirements shall not be artificially divided so as to constitute a purchase subject to this rule, 0620-3-3-.01(6); and
  - 5. annual needs for the subject service could not otherwise be more advantageously met with a fee-for-service contract.
- (b) Notwithstanding the foregoing, all procurement documents under this rule, 0620-3-3-.01(6), shall be submitted to the Department of Finance and Administration Office of Contracts Review for data collection and funding certification.
- (c) Rule 0620-3-3-.01(6) shall not be construed to apply to an Endowment Grant, a Delegated Grant Authority, a Delegated Loan Authority, a Delegated Purchase Authority, a no cost contract, or a revenue contract as defined by Rule 0620-3-3-.08 and .09 and shall not be construed to apply to Department of Transportation construction and engineering procurements made in accordance with the provisions of Tennessee Code Annotated, §§ 54-5-113, et. seq.
- (7) Contracts to employ additional legal counsel for the state of Tennessee are subject to the provisions of Tennessee Code Annotated, § 8-6-106. Said contracts shall not be subject to these rules. Contracts for the provision of legal services, consultation, or advice to beneficiaries of programs of the state of Tennessee and not directly to the state of Tennessee shall be made in accordance with these rules.
- (8) An agreement with the federal government providing for a grant award from the federal government to the state (to finance general purposes, operations, or program activities or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these rules. Notwithstanding the foregoing, the state's contracts with subrecipients and vendors paid with federal funding shall be subject to these rules.
- (9) Gifts to the state do not require a contract subject to these rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient state agency regarding the gift.
  - (a) For purposes of this rule, a gift to the state shall be defined as a voluntary transfer of service to the state made gratuitously and without consideration. Essential requisites of a gift are:
    - 1. capacity of the donor of the gift;
    - 2. intention of donor to make a gift;
    - 3. completed delivery of the gift to or for the state, and
    - 4. acceptance of the gift by the state.
  - (b) Nothing in this rule shall be construed to mean that the state must accept any gift.

(Rule 0620-3-3-.01, continued)

(10) These rules shall not apply to utilities.

(11) These rules shall not apply to contracts required to be approved by the State Building Commission.

**Authority:** §§4-5-202, 4-325; Subsection 2, 12-4-109, 12-4-110, and Chapter 601 of the Public Acts of 1976. **Administrative History:** Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.

**0620-3-3-.02 OFFICE OF CONTRACTS REVIEW.** There shall be created within the Department of Finance and Administration an Office of Contracts Review, which shall serve as the main point of contact and authority, subject to the approval of the Commissioner of Finance and Administration, regarding all matters subject to these rules.

The Office of Contracts Review shall:

- (1) execute the rules of this chapter;
- (2) act on behalf of the Commissioner of Finance and Administration in making determinations required by these rules;
- (3) provide procedural direction governing personal, professional, or consultant service procurements and contracts in accordance with these rules;
- (4) provide guidelines for drafting service procurement and contract documents in accordance with these rules;
- (5) provide technical assistance to state agencies regarding service procurements and writing contracts governed by these rules;
- (6) provide coordination services for the review and approval of service contracts in accordance with these rules;
- (7) administer a system for registering service providers who may contract with the state pursuant to these rules; and,
- (8) provide analysis and support to the Commissioner of Finance and Administration regarding state procurement processes.

**Authority:** §§4-5-202, 4-325; Subsection 2, 12-4-109, and Chapter 601 of the Public Acts of 1976. **Administrative History:** Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.

**0620-3-3-.03 PROCUREMENT METHODS.**

- (1) A procurement method is the process by which the state selects one or more contractors with which to contract for a given service.
  - (a) Personal, professional, and consultant services shall be procured by a method that is determined in the state's discretion to be efficient and reasonable. Except as otherwise provided in these rules, contracts representing the procurement of services shall be made on a competitive basis.
  - (b) To be competitive, a procurement method must include a consideration and comparison of potential contractors, based upon both cost and quality (i.e., service provider qualifications, experience, and technical approach). The terms "proposal," "bid," "quote," and "offer" shall all

(Rule 0620-3-3-.03, continued)

denote that which a service provider provides for competitive consideration and comparison under any competitive procurement methodology.

- (c) Accordingly, the Request for Proposal process, Competitive Negotiation, or an Alternative Competitive Procurement Method may be used as prescribed by these rules. Notwithstanding the foregoing, Non-Competitive Negotiation may also be used, as prescribed by these rules, in order for a state agency to meet procurement objectives efficiently and effectively and in the best interests of the state.
  - (d) Regardless of the procurement methodology used, the procuring agency shall retain a record of the procurement process and negotiations upon which each contract is based and documentation that each contract is awarded to a responsible and responsive proposer.
- (2) Request For Proposals (RFPs) - the formal solicitation of written proposals shall comply with the following requirements.
  - (a) The procuring agency shall prepare and issue an RFP and evaluate proposals in accordance with this rule and Department of Finance and Administration Office of Contracts Review Policy Guidelines. Failure by the state to comply with said rule and policy alone shall not be deemed a defect requiring rejection of all bids, said decision remaining in the discretion of the state.
  - (b) An RFP shall set forth specific provisions in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines including:
    - 1. a clear and accurate description of the technical requirements for the service to be procured - the service technical requirements and scope shall not contain features which unduly restrict competition and shall be in sufficient detail to minimize the likelihood of requests by potential proposers for clarification;
    - 2. directions regarding the submittal of proposals;
    - 3. a timeline of the RFP process that specifies deadlines - service providers shall be given a reasonable time, as determined by the state, to consider the required scope of services and the proposal evaluation factors before proposals must be submitted;
    - 4. state requirements and restrictions regarding the RFP;
    - 5. a description of the factors to be considered in evaluating the proposals - factors may include but are not limited to service provider qualifications, experience, technical approach, and cost; and
    - 6. a declaration of the contract terms and conditions which shall be required by the state.
  - (c) The procuring agency head shall carefully consider all individuals involved with the development, formulation, drafting, or review of an RFP or its scope of services and safeguard against a conflict of interest.
  - (d) The Department of Finance and Administration shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. All RFPs that would result in contracts requiring the Comptroller's approval shall also require the approval of the Office of the Comptroller of the Treasury before their public release. Further, any addenda, amendments, and clarifications to RFPs that would result in contracts requiring the Comptroller's approval shall be filed by the procuring agency with the Comptroller of the Treasury contemporaneously with their public release. An RFP or its revisions shall be approved based on the following:

(Rule 0620-3-3-.03, continued)

1. application of the requirements of this rule and Department of Finance and Administration Office of Contracts Review Policy Guidelines;
  2. adequacy of the scope of service description; and
  3. adequacy of the RFP's assurance of:
    - (i) fairness to potential service providers;
    - (ii) clear and open competition;
    - (iii) achievement of procurement objectives; and
    - (iv) protection of the state's interests.
- (e) Upon approval, the procuring agency shall send an actual RFP document or a formal notice that the specific RFP has been released to a documented list of potential service providers. The procuring agency shall compile the list of potential service providers from those known to the agency staff. The procuring agency shall determine the number of service providers to include on the list by considering the nature of the service sought, the anticipated amount of the resulting contract, and the number of known service providers.
- (f) A procuring agency is not required to send an RFP or RFP Notice to more than a total of fifteen (15) service providers provided, however, that the procuring agency shall disseminate the RFP or RFP Notice as required by Department of Finance and Administration Office of Contracts Review Policy Guidelines and to all that request the specific RFP. A general or standing request for notice of all RFPs or all RFPs of a given type of service shall not suffice as a request for a specific RFP and shall create no obligation on the state.
- (g) To foster the integrity of the RFP evaluation process, each proposer shall be required to submit the Cost Proposal component of the proposal in a sealed and labeled envelope separate from the Technical Proposal component. The purpose is to allow the cost component to be evaluated separately from the technical component.
1. The cost proposals shall not be opened until after the evaluation of the technical component is completed. After the technical proposal evaluation is completed, the cost proposals shall be opened and evaluated, and the scores of both components shall be combined to arrive at a total evaluation score provided, however, that the cost proposal shall not be opened if the associated technical proposal has been deemed non-responsive and is rejected by the state.
  2. Any proposal which fails to adequately separate the cost proposal components from the technical proposal shall be considered non-responsive and rejected by the state.
- (h) Proposal evaluations shall be conducted by state employees in such a manner as to reasonably ensure that all proposals are impartially considered and state requirements are adequately met.
1. Proposals shall be evaluated by a team of at least three (3) state employees. For purposes of this rule, a state employee shall be defined as set forth by Tennessee Code Annotated, § 8-42-101(3).
  2. Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of service providers making proposals, determine if a conflict of interest exists with a potential contractor, and sign a conflict of interest statement as required by Department

(Rule 0620-3-3-.03, continued)

- of Finance and Administration Office of Contracts Review Policy Guidelines. Said statement shall be retained as procurement file documentation.
3. Proposals shall be evaluated on the basis of factors pertinent to the service sought and detailed in the RFP document.
  4. Neither the technical proposal nor the cost shall be the only criterion for a contract award recommendation. However, specific factors may be set forth as a criterion for determining which proposals shall be considered responsive to the RFP.
  5. In the event that a proposal evaluation process results in two or more proposals receiving evaluation scores that tie for the rank of highest score, the State shall request best and final cost proposals from only those proposers with scores that tie for the rank of highest score. The State shall calculate new evaluation scores for the tying proposals by adding the original technical proposal scores to the recalculated cost proposal scores based on the best and final cost proposals. Should another tie result, the contract award shall be decided by coin toss.
  6. To effect a contract award to a service provider other than the proposer receiving the highest evaluation score, the head of the procuring agency shall provide written justification for such an award and obtain the written approval of the Commissioner of Finance and Administration and the Comptroller of the Treasury.
    - (i) The procuring agency shall communicate, clarify, and negotiate in the best interests of the state, provided that all communication is in a manner so as not to disclose any information that would give one or more proposers unfair advantage or unfairly enable one or more proposers to improve their proposal.
    - (j) The state shall have the right, at its sole discretion, to amend an RFP in writing at any time.
    - (k) The state shall have the right, at its sole discretion, to reject any and all proposals.
      1. Any proposal that does not meet the requirements of an RFP may be considered to be nonresponsive, and the proposal may be rejected.
      2. Any proposal that restricts the rights of the state or otherwise qualifies the proposal may be considered to be nonresponsive, and the proposal may be rejected.
      3. Whenever the state proposes to reject all proposals for a certain purchase, such action shall be taken only for the following reasons:
        - (i) unreasonably high prices or failure of all proposals to meet technical specifications;
        - (ii) error in the request for proposals;
        - (iii) cessation of need;
        - (iv) unavailability of funds;
        - (v) a determination by the affected agency that proceeding with the procurement would be detrimental to the best interests of the State, the reason for which must be documented and approved by the Commissioner of Finance and Administration and filed with the Comptroller of the Treasury.

(Rule 0620-3-3-.03, continued)

- (l) The state shall have the right, at its sole discretion, to cancel an RFP in its entirety and, at its sole discretion, to reissue or not reissue an RFP. The approval of the Commissioner of Finance and Administration shall be required prior to the cancellation of an RFP, and the Department of Finance and Administration shall file any such approved request with the Comptroller of the Treasury.
  - (m) All proposals and other material submitted in response to an RFP become subject to public record requirements of the state of Tennessee. Selection or rejection of a proposal does not affect its public records status. Upon the completion of the review and evaluation of proposals submitted in response to an RFP, evaluated proposals and associated materials shall be open for review by the public in accordance with Tennessee Code Annotated, § 10-7-504(a)(7).
- (3) Competitive Negotiation - the informal process of verbal or written solicitation of proposals shall comply with the following requirements and with Department of Finance and Administration Office of Contracts Review Policy Guidelines.
- (a) The Competitive Negotiation process may be used when it is determined by the Commissioner of Finance and Administration that one of the following is true:
    - 1. public need will not permit the delay incident to the RFP process;
    - 2. no acceptable proposals have been received after an RFP process;
    - 3. rates payable for the services are regulated by law;
    - 4. the services to be procured are legal or expert witness services; or
    - 5. the total cost of the services does not exceed \$10,000.00 or another amount which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury provided that service requirements shall not be artificially divided so that a procurement meets this criteria.
  - (b) Prior to proceeding with a Competitive Negotiation process, the head of the procuring agency shall justify such a procurement method in writing, based on the criteria set forth in Rule 0620-3-3-.03(2)(a), and request and obtain the written approval of the Commissioner of Finance and Administration. Said request shall document the criteria and methodology to be used in evaluating offers in response to the solicitation.
  - (c) Upon approval to proceed with the Competitive Negotiation process, the procuring agency shall:
    - 1. identify and contact at least three (3) potential service providers for Competitive Negotiation, provided, however, that the procuring agency shall contact minority, disadvantaged, and small business service providers as required by Department of Finance and Administration Office of Contracts Review Policy Guidelines;
    - 2. communicate the requirements of the state, solicit proposals, and clarify and negotiate as necessary in the best interests of the state, ensuring that all communication is conducted in a manner so as not to disclose any information that would give one or more proposers unfair advantage or unfairly enable one or more proposers to improve their proposal;
    - 3. document all proposals in response to the solicitation; and

(Rule 0620-3-3-.03, continued)

4. select for contract award, in accordance with the approved evaluation criteria and methodology, the service provider meeting required qualifications, terms, and conditions and offering the best proposal in terms of qualifications, delivery, and cost.
- (d) The procuring agency shall document the Competitive Negotiation process. The state agency shall provide a summary of said documentation upon submitting the contract for Department of Finance and Administration approval.
- (e) Subsequent to selection and negotiation the agency shall write a contract and initiate contract approval in accordance with these rules.
- (4) Alternative Competitive Procurement Method - an alternative process of procuring service shall comply with the following requirements and with Department of Finance and Administration Office of Contracts Review Policy Guidelines.
  - (a) A procuring agency may devise and document procedures for an Alternative Competitive Procurement Method and use the methodology in a specific contractor selection process provided that:
    1. prior, written approval of the Commissioner of Finance and Administration is obtained, and
    2. prior, written approval of the Comptroller of the Treasury is obtained for procurement processes that will result in a contract requiring the approval of the Comptroller.
  - (b) The Department of Finance and Administration shall file approved requests to use an Alternative Competitive Procurement Method, and the reasons therefore with the Comptroller of the Treasury.
- (5) Non-Competitive Negotiation - the negotiation of the terms of a service contract with only one service provider shall comply with the following requirements and with Department of Finance and Administration Office of Contracts Review Policy Guidelines.
  - (a) Non-Competitive Negotiation may be used when it is determined by the Commissioner of Finance and Administration that one of the following is true:
    1. there is only one uniquely qualified service provider capable of performing the needed service;
    2. the selected service provider is a state agency or any political subdivision of the state of Tennessee created and existing pursuant to the constitution and laws of Tennessee or any instrumentality of government created by one or more political subdivisions of Tennessee or by an act of the General Assembly;
    3. the selected service provider is an entity of the federal government;
    4. the use of Non-Competitive Negotiation is in the best interests of the state; or
    5. the total cost of the services for which the contract shall be written does not exceed \$5,000.00 or another amount which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury provided that service requirements shall not be artificially divided so that a procurement meets this criteria.



(Rule 0620-3-3-.03, continued)

- (b) Before beginning Non-Competitive Negotiation, the head of the procuring agency shall justify such a procurement in writing and request and obtain the approval of the Commissioner of Finance and Administration.
  - 1. A Non-Competitive Negotiation request shall specify:
    - (i) the petition to procure the subject service by means of negotiation with only the one, identified service provider;
    - (ii) the service provider with whom the state would negotiate for the service;
    - (iii) the service to be procured;
    - (iv) the specific Rule 0620-3-3-.03(5)(a) requirement(s) for Non-Competitive Negotiation believed to be satisfied by the subject procurement;
    - (v) the justification for Non-Competitive Negotiation detailing sound, business reasoning why a competitive procurement of the given services is not appropriate and why Non-Competitive Negotiation is in the best interests of the state;
    - (vi) the maximum cost of the non-competitive procurement; and
    - (vii) the contract duration.
  - 2. The request and approval for Non-Competitive Negotiation required by Rule 0620-3-3-.03(5)(b) shall not be required when:
    - (i) the selected service provider is a state agency or any political subdivision of the state of Tennessee created and existing pursuant to the constitution and laws of Tennessee or any instrumentality of government created by one or more political subdivisions of Tennessee or by an act of the General Assembly except, (said request, justification, and approval of Non-competitive negotiation shall be required) when the selected service provider is a state institution of higher education (e.g., a component of the University of Tennessee or the Tennessee Board of regents college and university systems);
    - (ii) the selected service provider is an entity of the federal government; or
    - (iii) the total cost of the services for which the contract shall be written does not exceed \$5,000.00 or another amount which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury provided that service requirements shall not be artificially divided so that a procurement meets this criteria.
- (c) Upon approval to proceed with Non-Competitive Negotiation, the procuring agency shall negotiate the best possible terms and price with the service provider, write a contract, and initiate contract approval in accordance with rules of this chapter.
- (d) By signing the contract, the procuring agency head indicates and confirms his or her determination that the contract price resulting from non-competitive negotiations is fair, reasonable, and, in the case of contracts with governmental entities, competitive.
- (e) The procuring agency shall document the Non-Competitive Negotiation process.

(Rule 0620-3-3-.03, continued)

- (f) The Department of Finance and Administration shall file approved requests to use Non-Competitive Negotiation to procure services and the reasons therefore with the Comptroller of the Treasury.
- (6) Grant Award - A grant in accordance with Rule 0620-3-3-.08(a) of this chapter shall not require justification or approval for any Competitive or Non-Competitive Negotiation but shall require a summary of the grantee selection process specifying whether it was a competitive or non-competitive process.

**Authority:** §§4-5-202, 4-325; Subsection 2, 12-4-109, and Chapter 601 of the Public Acts of 1976. **Administrative History:** Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.

**0620-3-3-.04 PROTEST PROCEDURES.** Tennessee Code Annotated, § 12-4-109(a)(1)(E) sets forth protest procedures regarding Requests for Proposals (RFPs) issued by the state.

- (1) Any service provider who has submitted a proposal in response to a specific RFP subject to these rules and who claims to be aggrieved in connection with that specific RFP process may protest to the procuring agency head.
  - (a) A protest shall be submitted within seven (7) calendar days after such claimant knows or should have known of the facts giving rise to the protest.
    - 1. All proposers to an RFP should know and shall be deemed responsible for knowing the facts documented in the state's procurement files on the day the procuring agency opens the RFP files for public inspection pursuant to Tennessee Code Annotated, § 10-7-504 (a)(7).
    - 2. All protests shall be submitted in writing to the head of the procuring agency within the required seven (7) calendar day period. Any issues raised by the protesting party after the seven (7) calendar day period shall not be considered as part of the protest.
    - 3. At the time of filing a notice of protest, the protesting party shall submit, to the procuring agency head, a bond payable to the State of Tennessee in the amount of five percent (5%) of the lowest cost proposal evaluated. Any protest submitted without the protest bond as required shall not proceed. A party may request an exemption from the protest bond requirement if it meets the qualifications of Tennessee Code Annotated Section 12-4-109(a)(1)(E)(v).
  - (b) The protest bond shall be in form and substance acceptable to the State (see Rule 0620-3-3-.13 for protest bond sample form) and shall be immediately payable to the State of Tennessee conditioned upon a decision by the review committee that:
    - 1. a request for consideration, protest, pleading, motion, or other document is signed, before or after appeal to the review committee, in violation of Tennessee Code Annotated, § 12-4-109 (a)(1)(E)(ii);
    - 2. the protest has been brought or pursued in bad faith; or
    - 3. the protest does not state on its face a valid basis for protest.
  - (c) The State shall hold a protest bond for at least eleven (11) calendar days after the date of the final determination by the procuring agency head. If the protesting party appeals the procuring agency determination to the Review Committee, the head of the procuring agency shall hold

(Rule 0620-3-3-.04, continued)

- said protest bond until instructed by the review committee to either keep the bond or return it to the protesting party.
- (d) A written protest to the procuring agency head shall enumerate and detail all issues and associated reasoning that the protestor wishes to be considered and requests judgments to be rendered upon by the state.
  - (e) Upon knowledge of any protest subject to these rules, the procuring agency shall notify and provide a copy of the written protest to the Department of Finance and Administration Office of Contracts Review.
  - (f) The procuring agency shall have no more than sixty (60) calendar days from receipt of a protest to resolve the protest unless the protestor and the procuring agency agree upon an extension of this time. The final determination of the procuring agency shall be given in writing. Said determination shall be submitted to the protestor and the Department of Finance and Administration Office of Contracts Review.
- (2) The protestor may appeal the procuring agency head's decision to the Review Committee within seven (7) calendar days from the date of the decision. The protestor's written request for consideration of the protest by the Review Committee
- (a) meet the requirements of Tennessee Code Annotated, § 12-4-109(a)(1)(E), et seq.;
  - (b) be delivered to both the procuring agency head and the Commissioner of Finance and Administration; and,
  - (c) enumerate and detail all issues raised in the initial protest that the protestor wishes to be considered and requests judgments to be rendered upon by the Review Committee.
- (3) The protestor shall provide no less than fifteen (15) copies of each exhibit or document upon introduction of such at the meeting of the Review Committee.

**Authority:** T.C.A. §§4-5-202 and 12-4-109(a)(1)(A)(ii), (iii) and (iv). **Administrative History:** Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed April 18, 1994; effective August 28, 1994. Amendment filed November 8, 2001; effective March 30, 2002.

**0620-3-3-.05 CONTRACT FORM.** The purpose of a written contract is to embody, in writing, the complete agreement between parties. No terms shall be left to an unwritten understanding. A contract shall be explicit and clearly state the rights and duties of each party. The terms and conditions for a contract subject to these rules shall be written, in form and content, in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines. Except as otherwise provided by the rules of this chapter, a contract subject to these rules shall meet the following requirements:

- (1) The contractor's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The contractor's duties may include, but are not limited to, the type, scope, duration, form, quality, quantity, place, time, and purpose of services.
- (2) The state's duties shall be clearly defined and detailed in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines. Contract terms shall clearly indicate the maximum liability of the state under the contract. The state's duties also include, but are not limited to, the method, timing and conditions of payment and the period of the contract.
- (3) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the state, shall be written as special terms and conditions, in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines.

(Rule 0620-3-3-.05, continued)

- (4) A Contract Summary Sheet, as required by Department of Finance and Administration Office of Contracts Review, shall be attached to the face of each original copy of a contract. Said Contract Summary Sheet shall remain attached to each copy of the contract whether held by the Division of Accounts, the procuring agency, or the contractor.
- (5) All contracts subject to these rules shall specifically state: "The Contractor [Grantee] hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract [Grant] or in the employment practices of the Contractor [Grantee] on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor [Grantee] shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination."
- (6) All contracts subject to these rules shall specifically state: "The Contractor [Grantee] shall maintain documentation for all charges against the State under this Contract [Grant]. The books, records, and documents of the Contractor [Grantee], insofar as they relate to work performed or money received under this Contract [Grant], shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles."

**Authority:** §§4-5-202, 12-4-109, 4-325; Subsection 2, and Chapter 601 of the Public Acts of 1976. **Administrative History:** Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.

**0620-3-3-.06 CONTRACT APPROVAL.** A contract subject to these rules shall be written and approved in accordance with this rule and Department of Finance and Administration Office of Contracts Review Policy Guidelines.

- (1) The procuring agency shall initiate approval of a contract or a contract amendment by delivering the contract or amendment, signed by the contract parties, to the Department of Finance and Administration Office of Contracts Review.
  - (a) A base contract (the original contract prior to any amendments) shall be submitted with:
    1. documentation of the procurement method and other procurement documentation which may be required by these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines; and
    2. an approved copy of any request which may have been made for an exception to these rules or a deviation from Department of Finance and Administration Office of Contracts Review Policy Guidelines.
  - (b) A contract amendment shall be submitted with:
    1. a copy of the base contract and all previous amendments to the base contract; and,
    2. if applicable, a new, written request to the Commissioner of Finance and Administration justifying the change in terms by means of Non-Competitive Negotiation (in accordance with Rule 0620-3-3-.07(1)); the Department of Finance and Administration shall file approved requests for non-competitive negotiation with the Comptroller of the Treasury.

(Rule 0620-3-3-.06, continued)

- (2) A contract or contract amendment subject to these rules shall be subject to the final approval of the Commissioner of Finance and Administration. Accordingly, the Department of Finance and Administration Office of Contracts Review shall:
  - (a) provide technical assistance toward the achievement of procurement goals and protection of the state's interests;
  - (b) assign a unique contract number to each contract;
  - (c) coordinate a process whereby funding availability is certified for each contract;
  - (d) review contract documents for Commissioner of Finance and Administration approval; and
  - (e) coordinate the review for approval by other officials required by these rules.
- (3) Upon approval by the Commissioner of Finance and Administration, a contract shall be fully approved, with the following exceptions:
  - (a) The Governor shall approve a contract between state agencies that includes provisions for cooperative programs.
  - (b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.
  - (c) The Comptroller of the Treasury shall approve a contract that includes:
    1. term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;
    2. provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;
    3. provisions concerning management services of all types, management studies, planning services, public relations, evaluations, systems designs, data processing; or
    4. provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.
  - (d) The Commissioner of Personnel shall approve a contract that includes:
    1. provisions for training state employees (except as provided by Rule 0620-3-3-.07(21)); or
    2. provisions permitting the procurement of services from an individual.
- (4) Upon final approval of a contract document requiring expenditures by the state, the Department of Finance and Administration Division of Accounts shall file the contract document with original signatures and record it in the State of Tennessee Accounting and Reporting System.
- (5) Upon final approval of a no cost contract or a revenue contract, the Department of Finance and Administration Office of Contracts Review shall return the original contract to the subject state agency.

**Authority:** §§4-5-202, 4-325; Subsection 2, 12-4-109, 12-4-110, and Chapter 601 of the Public Acts of 1976.  
**Administrative History:** Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.

**0620-3-3-.07 GENERAL REQUIREMENTS.** All service contracting subject to these rules shall follow the policy set forth in the following general requirements.

- (1) Amendments - A contract amendment is a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract. It shall be the practice of the state to enter only into contracts that are complete and thorough. However, during the course of a contract, it may become necessary to change, add to, or delete from the terms and conditions of the contract.
  - (a) A contract amendment shall meet the requirements of these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines and shall clearly detail the additions, deletions, and modifications to the subject contract.
  - (b) A contract amendment should be determined by the Commissioner of Finance and Administration to be either within the original scope of work and within the intent and purpose of the original contract; or a logical extension to the original scope of work.
  - (c) If a contract amendment adds to the original base contract scope of work, or extends the contract term (of a contract that did not provide for a term extension), or if a contract amendment increases the maximum liability of a contract entered on the basis of Non-Competitive Negotiation, the head of the procuring agency shall justify the contract amendment in writing and request and obtain the approval of the Commissioner of Finance and Administration. The Department of Finance and Administration shall file such approved requests and the reasons therefore with the Comptroller of the Treasury.
  - (d) A contract amendment shall require the approval of the same officials required for approval of the base contract. If the amendment changes the scope or the terms of the base contract in such a manner as to require additional review by one or more officials in accordance with Rule 0620-3-3-.06(c), said amendment and all subsequent amendments of the contract shall require that approval.
- (2) Authorization to Begin Work - A signed contract affixed with the signature of all officials required for approval of the contract shall authorize a contractor or grantee to commence work on the subject scope of services. No official or employee of the state of Tennessee, except the Commissioner of Finance and Administration, only in cases of emergency, in writing, shall have the authority to authorize a contractor or grantee to commence work before a signed contract has been completely approved according to these rules. The Department of Finance and Administration shall document any such authorization and the reasons therefore and file the documentation with the Comptroller of the Treasury.
- (3) Proposal Bond - In circumstances deemed appropriate by the procuring state agency, the state may require each proposer in response to a Request for Proposals (RFP) to provide the state with a bond payable to the state in the event that the proposer, if successful, fails to enter into a contract with the state in accordance with the terms of the RFP.
- (4) Communication and Negotiation - The procuring agency shall conduct such communication as it determines to be in the best interests of the state, provided that any communication, clarification, or negotiation which may take place regarding any service procurement or contract shall be conducted in a manner so as not to disclose any information that would give one or more service providers unfair advantage or unfairly enable one or more proposers to improve their proposals as a result.
- (5) Contract Term - A contract shall be entered into for a period or contract term sufficient to adequately accomplish the state's procurement objectives, provided that the contract contains appropriate termination provisions for performance failures, funding changes, and state convenience. However, no contract term shall exceed sixty (60) months.

(Rule 0620-3-3-.07, continued)

- (6) Contract with a Corporation - If the contractor is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The state may require that a copy of the corporate charter be submitted prior to contract approval.
- (7) Contract with Governmental Entities - A contract between a state agency subject to the rules of this chapter and another governmental entity (except another agency of the executive branch of Tennessee state government) shall contain an adequate description of the duties of each party, a statement of the contract term, and a statement of the maximum amount payable, and shall be drafted to comply with Department of Finance and Administration Office of Contracts Review Policy Guidelines. An agreement between state agencies may be drafted as a contract complying with Department of Finance and Administration Office of Contracts Review Policy Guidelines or may be executed by means of some other instrument to effect the understanding.
- (8) Contract with a State Employee or a Former State Employee - A state agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a state employee.
  - (a) For the purposes of applying this rule,
    - 1. an individual shall be deemed a state employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
    - 2. a contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any state employee shall be considered to be a contract with or proposal from the employee; and
    - 3. a contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a state employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these rules.
  - (b) A state employee may be compensated for performing services for a state agency other than the state agency employing the individual (e.g., a state accountant might be paid for teaching an evening accounting course at a community college). Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-3-2 and not the rules of this chapter.
- (9) Certification of Necessity, Funding, and Contractor Eligibility - The head of any state agency contracting with a service provider outside Tennessee state government shall determine and indicate, by signing the contract or Authorization to Vendor, that:
  - (a) the services are in fact needed;
  - (b) the services cannot be satisfactorily or efficiently performed by employees of the state of Tennessee;
  - (c) funds have been appropriated to meet the resulting financial obligations of the state for the services, and the procuring agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and
  - (d) the subject contractor is eligible, subject to these rules and any applicable federal or state requirements, to contract with the state for provision of the subject services.
- (10) Contractor Registration - Proposers need not be registered with the state to make a proposal. However, all service providers with whom the state of Tennessee contracts for services pursuant to these rules

(Rule 0620-3-3-.07, continued)

shall be registered as required by the Department of Finance and Administration Office of Contracts Review prior to approval of a contract.

- (11) Grantee Audit Requirement - Every person or entity receiving funds pursuant to a grant contract shall cause to be performed an audit of all its programs funded by grant contracts as required by said contracts, however, it is not intended that the existence of more than one grant contract or source of funds for a single grantee shall necessitate more than one audit in a single audit period.
- (12) Hiring of Employees - State employees shall be hired through the merit system of the Department of Personnel. All contracts with an individual and all Departmental Purchase Authorities shall be reviewed for approval by the Commissioner of Personnel to determine compliance with this policy.
- (13) Hold Harmless Prohibition - The state shall not agree by contract to indemnify or hold a contractor harmless for any liability arising from a contractual relationship.
- (14) Incorrect Proposal Information - If the state determines that a proposer has provided, for consideration in a contractor selection process or in negotiations, information which the proposer knew or should have known was materially incorrect, the subject proposal may be determined non-responsive, and the proposal may be rejected.
- (15) Payments - Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by state laws and regulations. Under no conditions shall the state be liable for payment of any type associated with the contract or responsible for any work done by the Contractor, even work done in good faith and even if the Contractor is orally directed to proceed with the delivery of services, if it occurs before the contract start date specified by the contract or before contract approval by state officials as required by applicable statutes and rules of the state of Tennessee - except, in accordance with Rule 0620-3-3-.07(2), the Commissioner of Finance and Administration shall have the authority to authorize a contractor or grantee to commence work before a signed contract has been completely approved according to these rules.
  - (a) All contracts, in which the state is to make payment(s) to the contractor, shall provide that payments are to be made upon submittal of invoices by the contractor, after performance of the portion of the service which each payment represents, except that, grants may provide for advance payments in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines.
  - (b) Except as provided in this rule, no payment shall be made for performance under a contract unless an appropriate, procuring agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by appropriate procuring agency staff's written approval of each invoice submitted for payment.
  - (c) A contract subject to these rules may provide for incentive payments. An incentive shall be defined as a payment, in addition to that which is required by a contract for minimally required performance, that is explicitly based upon contractor performance at a specified level beyond that which is minimally required.
  - (d) A contract subject to these rules shall not provide for the payment of a bonus. A bonus shall be defined as a payment, in addition to that which is required by a contract for minimally required performance, that is not based on contractor performance at a definitively specified level beyond that which is minimally required.
  - (e) The procuring agency shall maintain adequate documentation to support all payments.



(Rule 0620-3-3-.07, continued)

- (16) Performance Bond - In circumstances deemed appropriate by the procuring agency, the state may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these rules.
- (17) Proof of Insurance - As deemed appropriate, the state may require a potential contractor to provide proof of appropriate insurance prior to entering a contract subject to these rules.
- (18) "Responsible Proposer" shall be defined as a proposer that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (19) "Responsive Proposer" shall be defined as a proposer that has submitted a proposal that conforms in all material respects to the Request for Proposals.
- (20) Signature Authority - Each state agency shall file, with and in a form acceptable to the Department of Finance and Administration Office of Contracts Review, documentation detailing the actual signature of the head of the agency and the agency head's signature as written by any other persons authorized to sign service contracting documents on behalf of the agency head.
- (21) Training of State Employees - All contracts with provisions for training of state employees shall require the approval of the Commissioner of Personnel. This rule shall not apply to contracts for systems development that provide for state employee training on the resulting system.
- (22) Travel Reimbursements - Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and rules set forth in the State Comprehensive Travel Regulations as amended. The limits and rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the state of Tennessee at "in-state rates" and for the reimbursement of travel expenses incurred outside the state of Tennessee at "out-of-state rates."

**Authority:** §§4-5-202, 4-325; Subsection 2, 12-4-109, and Chapter 601 of the Public Acts of 1976. **Administrative History:** Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.

#### **0620-3-3-.08 SPECIAL CASES.**

- (1) Grant - A Grant shall be defined as a contract used to effect an award of funding or property to a grant recipient or grantee. A Grant shall benefit the general public or some population of the general public. Deliverables pursuant to a Grant Contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.
  - (a) A Grant shall represent one of the following:
    - 1. a contract effecting an award to a nonprofit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;
    - 2. a contract passing through a federal award which specifically identifies by name a grantee or subrecipient; or
    - 3. a contract effecting an award to fund work toward the completion of an activity or program which could not otherwise be more advantageously procured under a fee-for-service type contract - a grant representing this type of award must be determined to be appropriate and in the best interests of the state by the Commissioner of Finance and Administration.

(Rule 0620-3-3-.08, continued)

- (b) A Grant as defined in this rule shall be made by use of one of two grant contract types as follows:
  - 1. Cost-Reimbursement Grant - a grant contract in which payment(s) to the grantee shall be limited to reimbursement for actual, reasonable, and necessary cost as determined by the state and in accordance with an approved grant budget.
    - (i) A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the grantor and the grantee as defined by Department of Finance and Administration Policy 22.
    - (ii) A Cost Reimbursement Grant contract shall detail the state approved Grant Budget.
      - (I) A Grant Budget shall be defined as a schedule itemizing one or more specific activities or purposes under the Grant along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant and that total shall equal the maximum liability of the Grant.
      - (II) A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.
    - (iii) The grantor state agency shall conduct analysis and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated.
    - (iv) The grantor state agency shall document the grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for non-competitive selections. The state agency shall provide a summary of said documentation to the Department of Finance and Administration Office of Contracts Review with the grant contract upon request for approval.
    - (v) A Cost Reimbursement Grant contract shall be written, signed by the parties, and approved in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.
  - 2. Endowment Grant - a Grant contract effecting an award and conveyance of funds or property to a grantee for a particular purpose such that will benefit the general public or some population of the general public.
    - (i) An Endowment Grant's essential requisites are:
      - (I) the state's authority to make the Grant;
      - (II) the intention of the state to make an endowment award free of conditions beyond the specified purpose of the grant;
      - (III) the state's offer of an endowment award to the grantee;
      - (IV) the grantee's acceptance of the endowment award; and
      - (V) the grantee's fulfillment of the Grant's specific purpose.

(Rule 0620-3-3-.08, continued)

- (ii) An Endowment Grant shall result in the provision of services that are ancillary to the operation of state or federal programs and do not involve the management and implementation of a state or federal program.
  - (iii) An Endowment Grant shall not create a subrecipient relationship between the state and the grantee as defined by Department of Finance and Administration Policy 22.
  - (iv) An Endowment Grant must be determined to be appropriate and in the best interests of the state by the Commissioner of Finance and Administration.
  - (v) The grantor state agency shall document the grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for non-competitive selections. The state agency shall provide a summary of said documentation to the Department of Finance and Administration Office of Contracts Review with the grant contract upon request for approval.
  - (vi) An Endowment Grant shall cite the state's authority to make the Grant.
  - (vii) An Endowment Grant contract shall be written, signed by the parties, and approved in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.
- (2) No Cost Contract - A no cost contract shall be used to formalize the exchange of services which does not result in a pecuniary obligation between the state and the contractor. Prior to proceeding with any procurement of services under a no cost contract, the procuring agency shall obtain approval of the Commissioner of Finance and Administration. If the request to enter into a no cost contract is approved, the agency shall proceed with the procurement in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.
- (3) Revenue Contract - A revenue contract shall be used to formalize an agreement in which a state agency provides specific deliverable services for monetary compensation. Prior to proceeding with any revenue contract negotiation, the state agency must obtain approval of the Commissioner of Finance and Administration. If the request to enter into a revenue contract is approved, the agency shall proceed with the agreement in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.

**Authority:** §§4-5-202, 4-325; Subsection 2, 12-4-109, and Chapter 601 of the Public Acts of 1976. **Administrative History:** Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.

**0620-3-3-.09 DELEGATED AUTHORITY.** A Delegated Authority to make specific service agreements without further approval shall be effective upon the approval of the Commissioner of Finance and Administration and the Comptroller of the Treasury. No grant, loan, purchase, or agreement shall be initiated and no obligation shall be incurred under a Delegated Authority prior to the delivery of an approved copy of the authority to the subject state agency.

- (1) Delegated Grant Authority - A Delegated Grant Authority shall give approval to a state agency to issue grants for an individual program within specified limits and guidelines.
  - (a) A Delegated Grant Authority may be approved where:
    - 1. the program needs and category of services are such that adequate guidelines can be developed to direct the agency issuing a number of similar grants; and

(Rule 0620-3-3-.09, continued)

2. the individual grants involved are of such uniformity that there is little necessity or practicality in individual review by the Department of Finance and Administration Office of Contracts Review.
- (b) A Delegated Grant Authority shall set forth all provisions required by the Department of Finance and Administration Office of Contracts Review Policy Guidelines.
- (c) No changes shall be made to the approved grant form detailed by the Authority without a formal amendment of the approved Delegated Grant Authority.
- (2) Delegated Loan Authority - A Delegated Loan Authority shall give approval to a state agency to loan funds and to enter into loan agreements with individuals or organizations in accordance with a state or federally legislated program. A Delegated Loan Authority shall set forth all provisions required by the Department of Finance and Administration Office of Contracts Review Policy Guidelines.
- (3) Delegated Purchase Authority - A Delegated Purchase Authority shall give approval to a state agency to purchase services for an individual program, within specified limits and guidelines.
  - (a) A Delegated Purchase Authority may be approved where all of the following are true:
    1. the subject service needs are sporadic, and it is not possible to determine in advance their volume, delivery, or exact costs;
    2. it is impractical to award one or more fee-for-service contracts for the category of services with compensation based upon unit or milestone rates;
    3. the program needs and general categories of services are such that adequate guidelines can be developed to direct the agency in procuring services;
    4. the procurement terms, conditions, and criteria to be followed by the agency in conducting each purchase shall be of such uniformity that the approval by the Commissioner of Finance and Administration of each individual purchase is not necessary;
    5. the individual purchases involved are such that individual review by the Department of Finance and Administration Office of Contracts Review is impractical; and
    6. the procuring agency staff has made appropriate inquiries and assured the fairness of the maximum rates detailed in the authority.
  - (b) A Delegated Purchase Authority shall set forth all provisions and limitations required by the Department of Finance and Administration Office of Contracts Review Policy Guidelines.
  - (c) All purchases made pursuant to a Delegated Purchase Authority shall be made by the use of a written authorization to vendor approved by the Commissioner of Finance and Administration. No changes shall be made to the approved authorization to vendor without a formal amendment of the approved Delegated Purchase Authority.
- (4) Other Delegated Authority - Upon the establishment of specific guidelines, criteria, and procedures, other forms of Delegated Authority may be used to give approval allowing a state agency to enter agreements for an individual program within specified limits and guidelines. Notwithstanding the foregoing, all delegated authorities shall conform with the policy expressed in these rules.

(Rule 0620-3-3-.09, continued)

**Authority:** §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. **Administrative History:** Original Rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.

**0620-3-3-.10 CONTRACT MANAGEMENT.** The procuring state agency shall be responsible for the management of its contracts.

**Authority:** §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. **Administrative History:** Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.

**0620-3-3-.11 CONTRACT TERMINATION.** If a procuring agency determines it to be in the best interests of the state to terminate a contract for service before the contract end date, either for cause or convenience, the head of the procuring agency shall request and obtain the approval of the Commissioner of Finance and Administration prior to any notice of contract termination. The Department of Finance and Administration shall file approved requests for contract termination with the Comptroller of the Treasury.

**Authority:** §§4-5-209, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. **Administrative History:** Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.

**0620-3-3-.12 EXCEPTIONS TO RULES.** The Commissioner of Finance and Administration shall have the authority to make exceptions to the rules of this chapter. The Department of Finance and Administration shall file approved exceptions to these rules and the reasons therefore with the Comptroller of the Treasury.

**Authority:** §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. **Administrative History:** Original Rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.

**0620-3-3-.13 APPENDIX I OF RULE 0620-3-3-.04.** A Protest Bond may be presented to the state in form and substance compliant with the following Protest Bond format. Any Protest Bond presented to the state that represents a deviation from the following format shall be considered for acceptability by the state on a case-by case basis.

#### PROTEST BOND

The Surety Company issuing bond shall be licensed to transact business in the State of Tennessee by the Tennessee Department of Commerce and Insurance. The bond shall have certified and current Power-of-Attorney for the Surety's Attorney-in-Fact attached.

#### KNOW ALL BY THESE PRESENTS:

That we,

\_\_\_\_\_  
(Name of Protestor)

\_\_\_\_\_  
(Address of Protestor)

as the Party filing a protest of the State of Tennessee's determination(s) regarding a Request for Proposals (RFP) process, hereinafter called the Protestor, and

\_\_\_\_\_  
(Name of Surety)

(Rule 0620-3-3-.13, continued)

(Address of Surety)

as Surety, hereinafter call the Surety, do hereby acknowledge ourselves indebted and securely bound and held unto the State of Tennessee as Oblige, hereinafter called the Oblige, and in the penal sum of

(Dollar Amount of Bond)

good and lawful money of the United States of America, for the use and benefit of those entitled thereto, for the payment of which, well and truly to be made, we bind ourselves, our heirs, our administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

**BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:**

**WHEREAS**, the Oblige has issued a Request for Proposals bearing the RFP Number:

(RFP Number)

**AND**, the Protestor, as an actual proposer to the RFP, claims to be aggrieved in connection with said RFP process;

**AND**, the signature of an attorney or the Protestor on a request for consideration, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation;

**AND**, neither a protest nor a stay of award shall proceed under the laws of the State of Tennessee unless the Protestor posts a protest bond, the Protestor does file this protest bond payable to the Oblige with a notice of protest regarding the subject RFP process;

**AND**, the Oblige shall hold the protest bond for at least eleven (11) calendar days after the date of the final determination on the protest by the head of the affected agency;

**AND**, if the Protestor appeals the affected agency head's determination on the protest to the Review Committee, in accordance with subsection Tennessee Code Annotated, § 12-4-109(a)(1)(E)(vii), the head of the agency shall hold said protest bond until instructed by the Review Committee as to its disposition.

**NOW, THEREFORE**, this obligation or bond shall remain in full force and effect conditioned upon a decision by the Review Committee that:

1. a request for consideration, protest, pleading, motion, or other document is signed by an attorney or the Protestor, before or after appeal to the Review Committee, in violation of Tennessee Code Annotated, § 12-4-109(a)(1)(E)(ii);
2. the Protestor has brought or pursued the protest in bad faith; or
3. the Protestor's notice of protest does not state on its face a valid basis for protest.

In which case, this obligation or bond shall be immediately payable to the Oblige. Otherwise, this obligation or bond shall be null and void.

**IN WITNESS WHEREOF** the Protestor has hereunto affixed its signature and Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers,

on this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ .

**WITNESS:**

(Name of Protestor)

(Rule 0620-3-3-.13, continued)

(Authorized Signature of Protestor)
(Name and Title of Signatory)
(Name of Surety)
(Signature of Attorney-in-Fact)
(Name of Attorney-in-Fact)
(Tennessee License Number of Surety)

**Authority:** §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. **Administrative History:** Original Rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.

**0620-3-3-.14 REPEALED.**

**Authority:** §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. **Administrative History:** Original Rule filed March 2, 1977; effective April 1, 1977. Repeal filed November 8, 2001; effective March 30, 2002.

**0620-3-3-.15 REPEALED.**

**Authority:** §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. **Administrative History:** Original Rule filed March 2, 1977; effective April 1, 1977. Repeal filed November 8, 2001; effective March 30, 2002.